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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 0911231415-3799-03]

RIN 0648-XT12

Endangered and Threatened Wildlife and Plants; Notice of 6-month Extension of the Final Rulemaking to List 66 Species of Coral as Threatened or Endangered under the Endangered Species Act and Reclassify Acropora cervicornis and Acropora palmata from Threatened to Endangered

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of 6-month extension of the deadline for final listing determinations; public review.

SUMMARY: We, the National Marine Fisheries Service (NMFS), published on December 7, 2012, a proposed rule to list 66 species of reef-building corals (59 in the Pacific and seven in the Caribbean) and to re-classify two species already listed under the Endangered Species Act (ESA) from threatened to endangered and requesting information related to the proposed action. We are announcing a 6-month extension of the deadline for final determinations for all of the 68 proposed corals. Based on comments received during the public comment period, we find that substantial disagreement exists regarding the sufficiency and accuracy of the data and analyses relevant to the 68 proposed listing determinations. Accordingly, we are extending the

deadline for the final listing decisions for 6 months to solicit additional data. We believe that allowing an additional 6 months to evaluate and assess the best scientific and commercial data available would better inform our final listing determinations.

DATES: We are required to publish a final rule implementing the proposed listings and reclassifications or, if we find there is insufficient evidence to justify any of the proposed listings or reclassifications, a notice of withdrawal, no later than June 7, 2014.

ADDRESSES: The proposed rule, supporting documents, and other materials related to the proposed listing determinations can be found on the NMFS Pacific Island Regional Office Web site: http://www.fpir.noaa.gov/PRD/PRD_coral.html; NMFS Southeast Regional Office Web site: <http://sero.nmfs.noaa.gov/pr/esa/82CoralSpecies.htm>; NMFS HQ Web site: <http://www.nmfs.noaa.gov/stories/2012/11/82corals.html>; or by submitting a request to the Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, Attn: 66 coral species.

FOR FURTHER INFORMATION CONTACT: Lance Smith, NMFS, Pacific Islands Regional Office, (808) 944-2258; Chelsey Young, NMFS, Pacific Islands Regional Office, (808) 944-2137, Jennifer Moore, NMFS, Southeast Regional Office, (727) 824-5312, or Marta Nammack, NMFS, Office of Protected Resources (301) 427-8469.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, we published a proposed rule in the Federal Register (77 FR 73219) in response to a petition from the Center of Biological Diversity to list 83 species of reef-building corals as threatened or endangered under the ESA. We

determined that 12 of the petitioned coral species warrant listing as endangered (five Caribbean and seven Indo-Pacific), 54 coral species warrant listing as threatened (two Caribbean and 52 Indo-Pacific), and 16 coral species (all Indo-Pacific) do not warrant listing as threatened or endangered under the ESA. We also determined that two Caribbean corals (Acropora cervicornis and Acropora palmata) currently listed warrant reclassification from threatened to endangered. Via a 90-day comment period, we solicited comments from the public, other concerned governmental agencies, the scientific community, industry, foreign nations in which the species occur, and any other interested parties. We subsequently extended the public comment period by 30 days, making the full comment period 120 days to allow adequate time for the public to thoroughly review and comment on the proposed rule. We received comments through electronic submissions, letters, and oral testimony from public hearings held in Dania Beach, Florida; Key Largo, Florida; Key West, Florida; Rio Piedras, Puerto Rico; Mayaguez, Puerto Rico; Christiansted, St. Croix, U.S. Virgin Islands; Charlotte Amalie, St. Thomas, U.S. Virgin Islands; Hilo, Hawaii, Hawaii; Kailua Kona, Hawaii, Hawaii; Kaunakakai, Molokai, Hawaii; Wailuku, Maui, Hawaii; Lihue, Kauai, Hawaii; Honolulu, Oahu, Hawaii; Hagatna, Guam; Saipan, Commonwealth of the Northern Marianas Islands (CNMI); Tinian, CNMI; Rota, CNMI; and Tutuila, American Samoa.

During the public comment period, we received numerous comments on the proposed listing and the sufficiency or accuracy of the available data used to support the proposed listing determinations. In particular, commenters raised questions and provided varied, often conflicting, information regarding the following topics:

(1) Interpretation of the data relating to extinction risk and proposed species' listing statuses.

(2) The sufficiency and quality, or lack thereof, of the species-specific information used for each species' proposed listing determination.

(3) The accuracy of the methods used to analyze the available information to assess extinction risk (including NMFS's "Determination Tool") and derive listing statuses for each of the proposed species.

(4) The ability of corals to adapt or acclimatize to ocean warming and acidification.

(5) The reliability, certainty, scale, and variability of future modeling and predictions of climate change.

(6) The effect local management efforts have on coral resilience.

We have considered these comments, and we find that substantial disagreement exists over the sufficiency and accuracy of the available data used in support of the proposed determinations.

Extension of Final Listing Determinations

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of publication of a proposed rule to list or reclassify species: (1) Finalize the proposed listing rule; (2) withdraw the proposed listing rule; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data. As summarized above, we received numerous comments that document substantial disagreement regarding the sufficiency or accuracy of the available

data on six particular aspects of this proposed rulemaking. In many cases the commenters identified additional sources of information on these issues, but did not provide the actual information. Specifically, commenters raised questions and concerns regarding the availability, sufficiency and accuracy of species-specific information for many of the proposed coral species, including species' geographic ranges, distributions, population abundances, historical and current trends, threat vulnerabilities, and taxonomy, and those elements' relative influence on individual extinction risk and proposed listing classification. Others commented that the information used did not support the agency's findings on imminence of extinction for any of the proposed species, while some indicated the available information did indicate that extinction risk is imminent. There was significant disagreement regarding our application of available information on individual species' ability to adapt to climate threats over the foreseeable future. There was also disagreement on our application of available information to predict impacts of global climate change on any particular species, or at any particular location. Further, comments highlighted the complexities and uncertainties in information used to determine threat impacts and extinction risks to individual, widely distributed coral species in light of spatial and temporal variability of the climate related threats. Finally, several commenters stated that we did not fully or adequately evaluate information on the benefits of local management and conservation efforts on the status and resiliency of corals to threats.

Due to the substantial disagreement regarding the sufficiency and accuracy of the available data used to support our proposed listing determinations, we have determined it is necessary to solicit additional data from those scientists who have been identified by

public commenters and others who, in our judgment, may have additional data to assist in resolving the substantial disagreement.

Therefore, pursuant to the ESA section 4(b)(6)(B)(i), we have determined that a 6-month extension of the deadline of December 7, 2013, for final determinations on the proposed rule is needed. We will complete our data collection effort by October 1, 2013. All the relevant information that we receive in response to our solicitation will be posted on our websites (see ADDRESSES) by November 1, 2013, to provide notice to the public of the information on which our final rule may be based. As noted in the proposed listing rule, we were previously required to make final determinations on the 68 proposed listings and reclassifications no later than December 7, 2013. Therefore, with this 6-month extension, we are required to make final determinations on the proposed listings and reclassifications no later than June 7, 2014.

Opportunity for Public Review

We will complete our data solicitation efforts by October 1, 2013. Our solicitations and all relevant information that we receive in response will be posted on our websites (see ADDRESSES) by November 1, 2013, to provide notice to the public of new information on which our final rule may be based. Finally, if additional public review and comment is warranted, a request for comments will be published in the Federal Register.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: September 16, 2013.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator for
Regulatory Programs,
National Marine Fisheries Service.

